

Application No. 10/702,096

52. (Withdrawn) The method of claim 44 further comprising:

inserting a porous container into the disc cavity;

said porous container adapted for tissue promoting material insertion therein.

#### REMARKS

Claims 1-52 are pending. Claims 3, 5-7, 9-15, 18, 20-22, 32 and 34-52 were previously withdrawn because these claims are referring to a nonelected species.

#### Claims Rejections Under 35 U.S.C. §102

The Examiner rejected claims 1, 2, 4, 8, 16, 17, 19, 23-31 and 33 under 35 U.S.C. §102(e) as being anticipated by Belef et al. (U.S. Publication No. 2002/0147496). However, the Belef et al. application does not disclose the use of tissue promoting material as claimed by the present invention. The Belef et al. application is directed to a bioabsorbable bladder that is filled with fill material to remove stress on the annulus fibrosis and in some embodiments to facilitate healing of the annulus fibrosis. The only fill material disclosed in the Belef et al. application is: nucleus pulposus and in addition or alternatively, "naturally occurring extra-cellular matrix material, such as intestinal submucosa, stomach submucosa, and bladder submucosa, autologous therapeutics agents, e.g., concentrated growth factors derived from centrifuged plasma obtained from the patient, saline, a pharmaceutical, and/or genetic material." (Belef et al at ¶61). None of the disclosed fill materials will promote tissue growth that mimics the characteristics of a natural disc as is the goal of the present invention.

In contrast, the present invention is directed to methods and devices that stimulate the interconnected growth of fibrous and/or cartilaginous tissue within the disc space in order to stabilize the motion segment, by promoting the growth of living natural tissue. Belef teaches a

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teaches a bladder quite similar to the methods and device disclosed in U.S. Patent Nos. 5,571,189 and 5,549,679 to Kuslich for stabilizing a spinal motion segment, and like the Kuslich '189 and '679 disclosures, the Belef et al. application does not anticipate the promotion of fibrous tissue to provide the desired stability. This distinction is made clear in that Belef et al teach the placement of materials within a substantially closed, non-porous bladder, where the materials cannot contribute to the formation of a suitably stable matrix of fibrous growth. There is no disclosure in the Belef et al. application of promoting tissue growth that mimics the characteristics of a natural disc as claimed in the present invention.

#### CONCLUSION

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,



Wendy J. Cusick  
Registration No. 52,788

Customer No. 24113  
Patterson, Thuent, Skaar & Christensen, P.A.  
4800 IDS Center  
80 South 8th Street  
Minneapolis, Minnesota 55402-2100  
Telephone: (612) 349-3019